

(d) Orders placed under requirements contracts or definite-quantity contracts; or

(e) Orders placed under indefinite-quantity contracts that were entered into pursuant to this part when—

(1) The contract was awarded under subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order; or

(2) The contract was awarded under subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order.

(f) Orders placed against task order and delivery order contracts entered into pursuant to subpart 16.5.

[50 FR 52431, Dec. 23, 1985, as amended at 55 FR 52790, Dec. 21, 1990; 60 FR 34747, July 3, 1995; 60 FR 49725, Sept. 26, 1995]

6.002 Limitations.

No agency shall contract for supplies or services from another agency for the purpose of avoiding the requirements of this part.

6.003 Definitions.

Full and open competition, when used with respect to a contract action, means that all responsible sources are permitted to compete.

Procuring activity, as used in this part, means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term *procuring activity* shall be synonymous with *contracting activity* as defined in subpart 2.1.

Sole source acquisition means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

Unique and innovative concept, when used relative to an unsolicited research proposal, means that, in the opinion and to the knowledge of the Government evaluator, the meritorious proposal is the product of original thinking submitted in confidence by one source; contains new novel or changed concepts, approaches, or methods; was not submitted previously by another;

and, is not otherwise available within the Federal Government. In this context, the term does not mean that the source has the sole capability of performing the research.

[50 FR 1729, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985, as amended at 53 FR 27463, July 20, 1988]

Subpart 6.1—Full and Open Competition

6.100 Scope of subpart.

This subpart prescribes the policy and procedures that are to be used to promote and provide for full and open competition.

6.101 Policy.

(a) 10 U.S.C. 2304 and 41 U.S.C. 253 require, with certain limited exceptions (see subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.

(b) Contracting officers shall provide for full and open competition through use of the competitive procedure or combination of competitive procedures contained in this subpart that is best suited to the circumstances of the contract action. Contracting officers must use good judgment in selecting the procedure that best meets the needs of the Government.

6.102 Use of competitive procedures.

The competitive procedures available for use in fulfilling the requirement for full and open competition are as follows:

(a) *Sealed bids*. (See 6.401(a).)

(b) *Competitive proposals*. (See 6.401(b).) If sealed bids are not appropriated under (a) above, contracting officers shall request competitive proposals or use the other competitive procedures under (c) or (d) below.

(c) *Combination of competitive procedures*. If sealed bids are not appropriate, contracting officers may use any combination of competitive procedures (e.g., two-step sealed bidding).

(d) *Other competitive procedures*. (1) Selection of sources for architect-engineer contracts in accordance with the provisions of Pub. L. 92-582 (40 U.S.C.

541 *et seq.*) is a competitive procedure (see subpart 36.6 for procedures).

(2) Competitive selection of basic and applied research and that part of development not related to the development of a specific system or hardware procurement is a competitive procedure if award results from—

(i) A broad agency announcement that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs; and

(ii) A peer of scientific review.

(3) Use of multiple award schedules issued under the procedures established by the Administrator of General Services consistent with the requirement of 41 U.S.C. 259(b)(3)(A) for the multiple award schedule program of the General Services Administration is a competitive procedure.

[50 FR 1729, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985, as amended at 53 FR 27463, July 20, 1988; 59 FR 53716, Oct. 25, 1994]

Subpart 6.2—Full and Open Competition After Exclusion of Sources

6.200 Scope of subpart.

This subpart prescribes policies and procedures for providing for full and open competition after excluding one or more sources.

6.201 Policy.

Acquisitions made under this subpart require use of the competitive procedures prescribed in 6.102 after agencies have excluded a source or sources from participation in a contract action under the circumstances described in 6.202 or 6.203 below.

6.202 Establishing or maintaining alternative sources.

(a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would—

(1) Increase or maintain competition and likely result in reduced overall

costs for the acquisition, or for any anticipated acquisition;

(2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization;

(3) Be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(4) Ensure the continuous availability of a reliable source of supplies or services;

(5) Satisfy projected needs based on a history of high demand; or

(6) Satisfy a critical need for medical, safety, or emergency supplies.

(b)(1) Every proposed contract action under the authority of paragraph (a) above shall be supported by a determination and findings (D&F) (see subpart 1.7) signed by the head of the agency or designee. This D&F shall not be made on a class basis.

(2) Technical and requirements personnel are responsible for providing all necessary data to support their recommendation to exclude a particular source.

(3) When the authority in (a)(1) above is cited, the findings shall include a description of the estimated reduction in overall costs and how the estimate was derived.

[50 FR 1729, Jan. 11, 1985, as amended at 60 FR 42653, Aug. 16, 1995]

6.203 Set-asides for small business concerns.

(a) To fulfill the statutory requirements relating to small business concerns, contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business Innovation Research Program established under Pub. L. 97-219.

(b) No separate justification or determination and findings is required under this part to set aside a contract action for small business concerns.